Supreme Court, U.S.
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No. 95-1082

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

NIPPON CARBIDE INDUSTRIES CO., INC.,

Petitioner,

v.

MINNESOTA MINING & MANUFACTURING CO., INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF FOR THE ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS, INC. AS AMICUS CURIAE IN SUPPORT OF THE PETITION

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MOTION FOR LEAVE TO FILE BRIEF FOR THE ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS, INC. AS AMICUS CURIAE IN SUPPORT OF THE PETITION

The Association of International Automobile Manufacturers, Inc. ("AIAM") hereby moves, under Rule 37.2 of the rules of this Court, for leave to file the attached brief as *amicus curiae*. Counsel for the petitioner has consented to the filing of this brief; counsel for the respondent has stated that it is unable to consent at this time.

AIAM is a trade association representing the United States subsidiaries of international automobile companies doing business in the United States. Member companies distribute passenger cars, light trucks, and multipurpose passenger vehicles in the United States. Nearly half of these vehicles are manufactured in the new American plants established by AIAM companies in the past decade.

The contours of the Fourteenth Amendment's due process restrictions on the exercise of personal jurisdiction by United States courts is of paramount importance to the *amicus* and its member companies. In this case, the court of appeals failed to consider whether the exercise of jurisdiction over a foreign company was reasonable following its minimum contacts determination and largely ignored the substantial foreign aspects of this case. The court of appeals' approach conflicts with other courts of appeals and contravenes this Court's decision in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985) and *Asahi Metal Industry Co., Ltd. v. Superior Court*, 480 U.S. 102 (1987).

AIAM and its member companies fear that the lack of uniformity in this area of the law adversely affects the ability of foreign corporations to conduct business in the United States. AIAM is particularly concerned about the affect that the court of appeals' approach in this case has on the structuring of the relationships between the member companies and their foreign parents.

AIAM represents some of the leading automobile manufacturers in the country. As *amicus*, it can offer this Court a unique

perspective on the importance of this area of the law to domestic and foreign businesses, which will serve to emphasize the need for this Court's review of this case.

For these reasons, the Court should grant this motion for leave to file the attached brief *amicus curiae* in support of the petition for certiorari.

Respectfully submitted

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February 5, 1996

INTEREST OF THE AMICUS CURIAE

The Association of International Automobile Manufacturers, Inc. is the trade association representing the United States subsidiaries of international automobile companies doing business in the United States. Member companies distribute passenger cars, light trucks, and multipurpose passenger vehicles in the United States. Nearly half of these vehicles are manufactured in the new American plants established by AIAM companies in the past decade. Member companies include: American Honda Motor Co., Inc., American Suzuki Motor Corporation, BMW of North America, Inc., Fiat Auto U.S.A., Inc., Hyundai Motor America, Isuzu Motors America, Inc., Kia Motors America, Inc., Land Rover North America, Inc., Mazda Motor of America, Inc., Mercedes-Benz of North America, Inc., Mitsubishi Motor Sales of America, Inc., Nissan North America, Inc., Porsche Cars North America, Inc., Rolls-Royce Motor Cars, Inc., Subaru of America, Inc., Toyota Motor Sales, U.S.A., Inc., Volkswagen of America, Inc. and Volvo North America Corporation.

The Fourteenth Amendment's constraints on the exercise of personal jurisdiction is of substantial concern to AIAM and its member companies. The lack of uniformity in this area of the law and the assertion of jurisdiction over foreign companies without significant contacts with the United States hinders the structuring of the relationships between the member companies and their foreign parents. AIAM and its member companies believe that the erroneous jurisdictional approach by some lower federal and state courts, as illustrated by this case, could result in the exercise of jurisdiction over non-forum companies, especially foreign companies, who have very insignificant ties to the United States. As a result, the ability of foreign corporations to operate successfully in the United States could be impeded.

I. THE ISSUE PRESENTED IS IMPORTANT AND RECURRING

This case presents an important and recurring issue that arises in many cases where the state and federal courts attempt to assert jurisdiction over foreign corporations. It concerns an alien corporate defendant and an underlying intellectual property dispute that encompasses the substantive law of at least four

foreign nations. The issue is whether a court must, consonant with the due process clause of the Fourteenth Amendment and this Court's decisions in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985) and *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987), conduct a distinctive two-part inquiry encompassing a minimum contacts analysis and a reasonableness analysis. The reasonableness analysis is particularly important in cases involving foreign entities and issues.

The lower federal and state courts are divided as to whether a separate reasonableness analysis applying the five factors espoused in *Burger King* and *Asahi* is required. Some courts, as illustrated by the court of appeals in this case, do not engage in a separate reasonableness analysis.

This Court in *Asahi* placed special emphasis on the consideration of a dispute's foreign aspects where the case has significant international aspects. The court of appeals failed to consider at all "the procedural and substantive policies of other *nations* whose interests are affected by the assertion of jurisdiction by the [forum] court." *Asahi*, 480 U.S. at 115 (emphasis added).

This issue's importance to foreign corporations cannot be overstated. The lack of uniformity in the law of personal jurisdiction hinders the expectations of foreign businesses. Foreign corporations are understandably placed in a position of uncertainty regarding when they will be subject to the jurisdiction of a United States court. Exactly the same level of contact between a company and a given forum may or may not establish personal jurisdiction depending on whether the forum court conducts a reasonableness analysis and, if it does, what kind of reasonableness inquiry it performs.

Moreover, the failure of some courts to conduct a reasonableness analysis is simply unfair to foreign businesses. A foreign parent company, for example, may be subject to jurisdiction by virtue of very minimal contacts with this country, even if it had been careful, from the outset, about maintaining corporate formalities with its subsidiaries who deal more regularly in the United States.

The result of this case presents a foreign company with potentially unfair, expensive and inconvenient consequences should it choose to visit the United States for a limited purpose related to a foreign dispute.

II. A SEPARATE REASONABLENESS ANALYSIS EMPLOYING THE FIVE FACTORS ARTICULATED IN BURGER KING AND ASAHI IS COMPELLED BY DUE PROCESS

Before the decisions of this Court in *Burger King* and *Asahi* there was a question as to whether the satisfaction of the minimum contacts test, as articulated by *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), was not only a necessary but also a sufficient condition toward establishing personal jurisdiction. Though the Court had suggested that minimum contacts were sufficient to establish personal jurisdiction, this Court's decisions in *Burger King* and *Asahi* show that this is no longer the case.

While the *Burger King* Court indicated that minimum contacts remained the "constitutional touchstone" of the jurisdictional analysis, the Court also indicated that "[o]nce it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'" 471 U.S. at 476. In *Burger King*, jurisdiction over the non-forum defendant was found to be consistent with the Fourteenth Amendment.

In *Asahi*, eight Justices determined that the exercise of jurisdiction over the foreign defendant would be unreasonable in light of the five factors listed in *Burger King*:

> the burden on the defendant, the interests of the forum State, the plaintiff's interest in obtaining relief, . . . "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the

several States in furthering fundamental substantive social policies."

Asahi, 480 U.S. at 113 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)). Furthermore, a majority of the Justices in *Asahi* agreed that a separate reasonableness analysis is necessary even where minimum contacts might be present. *See id.* at 116 (Brennan, J., joined by White, Marshall and Blackmun, JJ., concurring in part and concurring in the judgment); *id.* at 121-22 (Stevens, J., joined by White and Blackmun, JJ., concurring in part and concurring in the judgment).

The Eighth Circuit's analysis minimizes certain factors and completely ignores "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies." These factors are of paramount importance in any case involving a foreign defendant and implicating the substantive and procedural policies of foreign countries.

CONCLUSION

For the foregoing reasons, and for the reasons stated in the petition, certiorari should be granted.

Respectfully submitted

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